

Large and Mid-Size Business Division Fast Track Dispute Resolution Pilot Program

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As part of the Internal Revenue Service's continuing commitment to reduce the burden on taxpayers, its Large and Mid-Size Business Division recently announced a Fast Track Dispute Resolution Pilot Program (IRS Notice 2001-67). The program creates a new opportunity for corporate taxpayers to utilize Appeals tools to resolve outstanding issues while their cases are still in the Compliance jurisdiction. There are several benefits to this program, including reducing time and cost to resolve issues, bringing dispute resolution to the lowest level, and fostering cooperative relationships between taxpayers and the IRS.

The pilot is a joint effort between LMSB and the Office of Appeals. The program is open to corporate taxpayers in the LMSB Division — that is, those taxpayers with greater than \$10 million in assets. The taxpayers must also have at least one open year under examination and at least one disputed issue. We recently spoke with J. W. Wyatt, Appeals Fast Track Acting Program Manager, who shared much insight into the program.

If taxpayers choose to enter the program, they have two options, settlement and mediation.

Fast Track Mediation

Under Fast Track Mediation (FTM), an Appeals Officer or an Appeals Team Case Leader will act in the role of mediator to help the parties resolve factual issues. Under FTM, there is no hazards settlement option. In other words, the taxpayer and the IRS cannot reach a settlement based upon the hazards of litigation, as they would if the case were actually in Appeals jurisdiction. Under this option, the parties look at factual issues and reach a voluntary, uncoerced agreement. The objective is to facilitate communication and negotiation in order to reach resolution of the issues between the parties.

Fast Track Settlement

Under this option, Appeals may use its settlement authority to achieve a mutually acceptable agreement. This option utilizes an Appeals Team Case Leader to facilitate the communications to resolve both legal and factual issues. In Fast Track Settlement, Appeals may consider the hazards of litigation when resolving disputes.

Benefits

There are several key features to the Fast Track Dispute Resolution (FTDR) program, including no accrual of "hot interest". Hot interest is the additional two percent interest that corporations are required to pay on deficiencies of more than \$100,000 when an issue goes to Appeals. Generally, hot interest begins to accrue 30 days after the 30-day letter is issued by Compliance. By utilizing FTDR, taxpayers are able to enjoy the benefit of having Appeals tools and settlement techniques available to them while they are still in Compliance's jurisdiction. And since they are still in Compliance's jurisdiction, hot interest will not begin accruing.

Another feature of the program is that the process is relatively fast, with the goal being to resolve issues under the fast track program within 120 days. The cases that have been settled

thus far in the pilot are averaging only 60 days to resolve. This is a significant time savings over the two years (or more) it generally takes for the normal procedure where the audit and appeal occur sequentially. In the traditional process, at the end of the examination, it generally takes a taxpayer up to 60 days to prepare the protest letter in response to the 30-day letter issued by exam. After the protest is submitted, it takes between 30 and 45 days for the rebuttal to be prepared by exam. Once these two steps are complete, it takes an average of 138 days for LMSB to transfer the case to Appeals. After Appeals receives the case, it takes another 60 to 90 days to assign the case and schedule the first meeting with the taxpayer. Under the new FTDR program, the issue gets resolved in significantly less time than it takes just to transfer the case from exam to Appeals. And 30 days after the 30-day letter is issued, hot interest begins accruing. Thus, the new program saves both time and money for taxpayers.

In addition, instead of multiple computations being completed at both the Compliance and Appeals level, only one computation is done, which by itself saves a significant amount of time for both parties.

How the Process Works

After Form 5701, Notice of Proposed Adjustment, has been issued by Compliance and the issues are substantially developed, either the Taxpayer or Compliance may re-

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Large and Mid-Size Business Division Fast Track Dispute Resolution Pilot Program

quest to use FTDR. Both parties must agree to use FTDR before the program can be utilized. FTDR works best when the issues are fully developed and there are a limited number of issues. The program seems to work best if there are fewer than seven issues open, though some of those issues may be large such as a Research Credit issue. The taxpayer must provide a written response to the 5701 as part of the request process. After the Team Manager and the taxpayer agree to enter the FTDR process, they select either mediation or settlement, complete a one-page "LMSB Fast Track Agreement," and then within three days forward to Appeals a package of materials, including the agreement form, the 5701s, and the taxpayer response. Resources from Appeals are assigned to the case within 7 days of receiving the package, the Appeals team is formed, and Appeals contacts the parties within 10 days to begin the process. When forming the team, Appeals strives to locate the best-suited person to deal with the issue, no matter where he or she is located.

The next step in the process is for Appeals to conduct sessions with the taxpayer and Compliance to try to reach a settlement. The sessions may be held at the Appeals Office or another site. In order to facilitate the process, all decision-makers must be present for the meetings. Under the mediation option, the Appeals Officer will lead the negotiations with the anticipation that the parties will have the ability to reach a voluntary, mutually acceptable agreement. The Appeals Officer tries to develop each party's listening and communication skills so that everyone will understand the actual dispute.

If the case involves hazards of litigation, then the parties must use the Fast Track Settlement option. When the parties reach an agreement under this option, Appeals exercises its settlement authority to accept the settlement. The goal is to have the entire Fast Track Dispute Resolution completed within 120 days. As of January 11, 2002, the average resolution period has been 60 days.

If the parties cannot reach an agreement, then either party may withdraw from the process. The taxpayer may withdraw by notifying the LMSB Team Manager and the Appeals representative in writing. The Appeals representative or the LMSB Team Manager also may terminate the process if it becomes apparent that meaningful progress toward resolution of the issues has stopped. In addition, if the parties cannot reach an agreement, the normal 30-day letter is issued so that the taxpayer may prepare a protest to proceed to Appeals. The taxpayer retains all of its Appeals rights since the FTDR occurs while the case is in Compliance's jurisdiction. Generally, a new Appeals Officer will be assigned to the case when it reached Appeals the traditional way.

Another significant aspect of the Fast Track Process is the ex parte communications rules do not apply. Since the case is still in Compliance's jurisdiction, not Appeals', the rules are not applicable. Accordingly, Appeals may talk to both parties separately about issues prior to meeting.

Fast Track cannot be used for the following issues: issues designated for litigation by Chief Counsel; an issue

that is the subject of a request for competent authority; an issue for which the taxpayer has requested the simultaneous Appeal/Competent Authority procedure; issues outside Appeals' settlement authority (e.g., application of certain international penalty provisions under Chapter 61 of the Internal Revenue Code); and a case that is not within LMSB's jurisdiction (such as a case in Tax Exempt Government Entities jurisdiction or the Small Business Self-Employed jurisdiction).

Pilot Program Experience

The Fast Track Dispute Resolution pilot program began on November 14, 2001, and applications will be accepted through November 14, 2002. To date, there has been a positive response from both tax practitioners and taxpayers. As of January 11, 2002, 17 cases have been accepted into the program and 6 have already been settled. There are another 16 applications pending. On average, it has taken 60 days to settle the cases, starting with the day the application is signed by both parties. So the results have been outstanding so far. No party has yet requested the mediation option. The cases that have gone through the program thus far have been ones where the teams have used all the resolution authority available to them, so they are opting for settlement instead.

Where it has worked:

A broad area of issues has been successful so far in the pilot program, some examples include: transfer pricing under section 482, research credit, corporate-owned life insurance, and

consolidated regulations issues. It has been successful for both legal and factual issues. In addition, it has been beneficial when both parties bring experts into the process.

Coordinated issues will be allowed to enter the program also. They will bring Industry Specialists into the process so the taxpayer will be able to talk to them about the issue. This is a significant change from the traditional procedures where the taxpayer generally was not permitted to meet with the Industry Specialists.

Where it has not worked:

To date, 15 applications have been declined. The main reason for the denial is that the 30-day letter had already been issued in those cases. To apply for the program, the Form 5701 must be in its final version, but the 30-day letter must not have been issued. In addition, if a Field Service Advice or Technical Advice Memorandum has been requested, the application will not be accepted.

Another area where it does not work is when a party requests to enter the program before the final Form 5701 has been issued. Requests have been received from parties wanting Appeals to come into the case to dictate what documents should or should not be requested. This is not what the program is designed to do. For FTDR to succeed,

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Large and Mid-Size Business Division Fast Track Dispute Resolution Pilot Program

all examination work must be complete and the final 5701 must be issued so that the parties have taken firm positions on the issue. Appeals then works with the parties to reach an agreement on the conflict.

Initially, the limit on the number of cases that they would accept into the program was 15 for the settlement option and 20 for the mediation option. With the significant reduction in the time and burden and the success that they have experienced so far, however, the IRS estimates that between 60 and 80 cases under this program this year.

The Fast Track program has been successful for many reasons, including the involvement of both internal and external stakeholders in designing the program. Members of the design team spoke with Revenue Agents to determine the tools they needed in order to resolve disputes, and they engaged groups such as TEI and the AICPA to get their input on what would help to resolve issues faster. The FTDR was developed through this input. Taxpayers

seem pleased with the program because it reduces the costs and burden to them. Examiners like the program because they participate in the process to reach a settlement; they have a voice in the settlement and understand how it was reached. And Appeals Officers like the program because it reduces the burden on them, because the parties voluntarily enter into it. They also have all of the information and decision-makers in front of them.

The Fast Track Dispute Resolution Program provides a great opportunity to taxpayers to resolve issues at the lowest possible level within the IRS. This reduces the burden to them by saving both time and money. It has experienced great success so far, and all eligible taxpayers should consider applying. Interested taxpayers may contact the team manager for their current examination. Alternatively, taxpayers may contact Jim Fike, LMSB Fast Track Program Manager, at 202.283.8353 or J.W. Wyatt, Appeals Fast Track Acting Program Manager, at 314.612.4639.



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